

Right against Self-incrimination: A study with reference to Narco-analysis

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Abstract— The doctrine of right against self-incrimination has a long history evolving over centuries across different legal systems worldwide. The roman legal system recognised the concept of “*Nemo tenetur seipsum accusare*” which means ‘no man is obliged to accuse himself’. This maxim was later developed during the medieval period as a safeguard against the system of abuses of inquisition, especially in the trial of John Lilburn, when he refused to take the oath or to answer against himself.

The English bill of Rights(1689) further set in stone the right to not to be compelled against oneself. The right is later incorporated in the constitution of the United states in the Fifth amendment and afterwards in Article 20(3) of the Indian constitution.

The use of narco-analysis test is not only a violation of fundamental right, but its use as evidence is prohibited in court due to its unreliability and nature of abuse. This paper seeks to analyse the nature and scope of narco-analysis tests, examining their scientific basis, limitations, and potential for abuse. It critically analyses the legal framework governing the use of narco-analysis tests in India, including relevant judicial pronouncements and legislative provisions.

The paper concludes by emphasizing the need for a balanced approach that safeguards the rights of the accused and proposes potential reforms to ensure that the use of such techniques is consistent with the principles of human rights and the rule of law

Keywords: Right Against Self-Incrimination, Narco-analysis Tests, Human Rights, Indian Constitution

1. Self-incrimination: Concept

“The privilege against self-incrimination is one of the great landmarks in man's struggle to make himself civilized... The Fifth is a lone sure rock in time of storm ... a symbol of the ultimate moral sense of the community, upholding the best in us.” -Erwin Griswold

The fifth amendment of US constitution creates a large number of rights in both civil and criminal proceedings. Self-incrimination is also one of the integral components of fifth amendment, ratified in 1791, which states that “*No person shall be... compelled in any criminal case to be witness against himself without due process of law... right that is colloquially referred to as talking/pleading the fifth.*”

1.2 Self-Incrimination under Constitution of India

This immunity of compulsion to be witness is enshrined in part III, article 20(3) of Indian constitution which is considered sacrosanct by framers of Indian constitution. Article 20(3) reads as “*No person accused of any offence shall be compelled to be a witness against himself.*”¹ This article protects an individual, accused of an offense, from being compelled to be witness in their criminal prosecution. This right is applied only when compulsion is made to obtain such information and not against statements made voluntary.

The hon'ble court in *M.P. Sharma v. Satish Chandra*² declared right against self-incrimination to consist of the following components:

1. It is a right of “a person accused of an offence”
2. It is “a protection against compulsion to be a witness” and
3. It is “a protection against such compulsion that results in him giving evidence”³

¹ The Constitution of India, art. 20(3).

² AIR 1954 SC 300.

³ *Ibid.*

1.2.1 ‘Protection to a Person Accused of an Offence’

One of the essential element for application of this doctrine of self-incrimination is that the person is accused of a criminal offence. The Supreme court in *Raja Narayanlal Bansilal v Maneck Phiroze Mistry*⁴ held that for invoking the fundamental right against testimonial compulsion mentioned in article 20(3), it is prior condition that a formal accusation has been made against the party. A formal accusation is made if a F.I.R. is lodged against a person.

1.2.2 ‘Protection against Compulsion to be a Witness’

To fall within Article 20(3) – must itself have a tendency of incriminating the accused – i.e., “it should be a statement which makes the case against the accused person at least probable, considered by itself. A specimen handwriting or signature or finger impressions by themselves are no testimony at all being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with.” Notice how “innocuous” is run together with “unchangeable”, although they do not – for one moment – mean the same thing.

The word compulsion has been interpreted in *State of Bombay v. Kathi Kalu Oghad*⁵ in the abovementioned way:

*“Compulsion’ in this context, means what in law is called ‘duress’. ... The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted. ... Hence, the mere fact that the accused person, when he made the statement in question was in police custody would not, by itself, be the foundation for an inference of law that the accused was compelled to make the statement. Of course, it is open to an accused person to show that while he was in police custody at the relevant time, he was subjected to treatment which, in the circumstances of the case, would lend itself to the inference that compulsion was in fact exercised.”*⁶

Interpretation of the word ‘Compulsion’ cannot be limited to physical sense but also extends to psychological sense. It takes many forms. For Instance, A person may be either beaten and starved to obtain confession from him or may by deceitful means made to believe that his family member is being tortured or will be tortured if certain confession is not made.

1.2.3. ‘Protection against such Compulsion that Results in him Giving Evidence’

For a testimony by an accused person to be considered as self-incriminatory under article 20(3), it must be of such a character that by itself, it should have the tendency of incriminating the accused, In other words, “it should be a statement which makes the case against the accused person at least probable, considered by itself. A specimen handwriting or signature or finger impressions by themselves are no testimony at all being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with.”⁷ Statement made without threat, inducement, torture and promise does not come under the ambit of article 20(3).

1.3 Evolution

The concept of self- incrimination has gone through a slow but deliberate shift to increase legal protection to rights of an individual. there were early discussions about whether it was right to force people to confess to crimes, especially if torture was involved. Roman legal thinkers, including Ulpian and Paulus, considered whether such confessions were reliable. Despite these debates, the practice of using torture to obtain statements remained common, especially for certain groups like slaves. The principle of “*nemo tenetur se ipsum accusare*” was not yet formalised.

In England, agreement of Magna Carta and its reissues—starting in 1215—did not directly mention self-incrimination, but they did promote fair legal procedures. Over time, these ideas would later support the belief that it was wrong to force someone to accuse themselves.

A major change took place in seventeenth-century England with the weakening and eventual end of the Star Chamber, a royal court known for using forced confessions. In 1637, John Lilburne became famous for refusing to take an oath that would have made him answer any question about his alleged crimes, even if it meant admitting to them. By 1641, the Star Chamber was abolished, helping

⁴ AIR 1961 SC 29.

⁵ AIR 1961 SC 1808.

⁶ *Ibid.*

⁷ *State of Bombay v. Kathi Kalu Oghad*, 1961 AIR 1808.

lay the groundwork for the notion that individuals had a right to stay silent and not be forced into confession. This reflected the legal progress towards protecting individuals from self-incrimination.

In 1689, the English Bill of Rights introduced some general protections against arbitrary power, although it did not specifically mention self-incrimination. By the eighteenth century, English common law judges were regularly affirming the principle '*nemo tenetur seipsum accusare*', i.e. no man is bound to accuse himself. Many American colonists took these ideas to heart, particularly when they felt the English government was trampling on their rights.

In 1791, the United States Bill of Rights openly recognized the privilege against self-incrimination in the Fifth Amendment, stating that no person "shall be compelled in any criminal case to be a witness against himself." This was a major step to support the principle of self-incrimination.

In the mid-twentieth century, international agreements increasingly recognized this right. The Universal Declaration of Human Rights (UDHR) of 1948 promoted fairness and the presumption of innocence, and the International Covenant on Civil and Political Rights (ICCPR) of 1966 explicitly said that no one can be compelled to testify against themselves.

The Constitution of India came into force on November 26, 1949. Article 20, earlier sequenced as article 14 in the constituent draft, was discussed by the Constituent Assembly on December 2, 3 and 6, 1948. Throughout these discussions, references were made to constitutional frameworks abroad, particularly the Fifth Amendment of the United States Constitution, which similarly forbade compelled self-incrimination.

Kazi Syed Karimuddin, made speech to defend his proposal during the drafting of constitution:

*"In India, in practically every province, there are Goonda Act and Public Safety Act which do not provide for any appeals or representations, and which give no opportunity to the persons concerned to defend themselves. Arrests are made without warrant and searches without justification. We are being governed by lawless laws and there is no remedy for the redress of grievances on account of unauthorised arrests and searches. We have seen in 1947, and in the beginning of 1948, that hundreds of thousands of people were arrested and houses were searched merely on suspicion. The result is that the morale of the members of the Muslim minority community was undermined and they were treated just like criminals in the country. I will give the house one very important instance. Whenever we went to an aerodrome to go to Delhi, our belongings were searched without any reason, without any cause and without any warning. I will now give another instance. When there was police action in Hyderabad, every Muslim worth the name was arrested without any justification in the adjoining provinces. If those Muslims were really traitors they ought to have been prosecuted, punished and hanged. But people who had nothing whatever to do with Hyderabad were arrested under the pretence that they were taken only under protective custody. Well, if they were taken under protective custody, why were their women and children who were outside not taken under this protective custody? Therefore my submission is that unless this fundamental right that I have asked for in this amendment is guaranteed, there will be no end to these arrests without warrants and to these searches without justifications. I have moved this amendment in the earnest hope that it would be accepted."*⁸

Despite considering foreign models, the Assembly crafted language appropriate to India's legal context, making sure that an accused person's right against self-incrimination would be clearly protected. Members generally agreed that it was vital to enshrine this principle as a fundamental right, not merely as a statutory or procedural rule, so that it could not be easily eroded by future legislatures. By situating the provision alongside Article 20's other safeguards against ex post facto laws and double jeopardy, the drafters ensured a more comprehensive shield for individuals facing criminal charges. In November 1949, when the final text of the Constitution was being approved, Article 20(3) was adopted without significant alteration, signifying the Constituent Assembly's firm stance that no individual should be coerced into serving as the instrument of their own conviction.

Today, the privilege against self-incrimination is challenged by new technologies and national security concerns. Courts have discussed whether being made to unlock a smartphone or taking signature, DNA samples and fingerprints counts as a compelled admission.

1.4 Right to Remain Silent and Right Against Self-Incrimination

The *right to remain silent* is based on the principle, "*Nemo debet prodere ipsum*" i.e. privilege against self-incrimination. According to *Maneka Gandhi v. Union of India*⁹, Every accused charged of criminal allegations has the right to fair, just and equitable

⁸ Constituent Assembly Debates on December 3rd, 1948 available at: https://eparlib.nic.in/bitstream/123456789/762986/1/cad_03-12-1948.pdf (last visited on February 2nd, 2025).

⁹ AIR 1978 SC 597.

procedure. In India, the right against self-incrimination is constitutionally guaranteed by Article 20(3), is deeply connected to the concept of remaining silent, safeguarding individuals from being coerced into making incriminating statements.

A landmark judgment in this domain is *Nandini Satpathy v. P.L. Dani*¹⁰, where the Supreme Court held that no one can be compelled to answer questions if doing so would incriminate them. The Court emphasized that the constitutional protection extends not merely to forced confessions but also to any compelled testimony that may later be used against the accused.

In *Selvi v. State of Karnataka*¹¹ declared the non-consensual use of narco-analysis, polygraph, or brain-mapping unconstitutional, reinforcing the inviolability of the individual's right against self-incrimination and to remain silent.

The right to remain silent is also enshrined Article 6 of the European Convention of Human Rights. But recently the onus of proof is on prosecution to prove that is accused is guilty of an offence because the accused is presumed to be innocent until proven guilty. During any stages of prosecution, an accused have right to remain silent and not to provide such evidence which are self-incriminating in nature.

1.5 Right to Privacy and Right Against Self-Incrimination

Right against self-incrimination has gone through a legacy of generations of adaptation. Various changes can be seen from roman period to abolition of star chamber to incorporation into U.S. bill of rights and Fundamental right under Indian constitution. Not only this principle is incorporated from English common law to Domestic legal system of various countries, this has been adopted by various international agreements like Universal Declaration of Human Rights (UDHR) of 1948¹², and the International Covenant on Civil and Political Rights (ICCPR) of 1966.¹³

Over the last decade, the continuous emergence of new gadgets have significantly reshaped personal privacy. As devices become increasingly integrated into everyday life-smartphones, laptops, wearable technologies like smart watch, and smart home devices-generate large volumes of data, including location information, browsing habits, health indicators, and personal information and confidential communications. There is no doubt that features like, Biometric features, facial recognition or fingerprint authentication, offer greater security but they can also enhance surveillance capabilities, blurring the boundary between legitimate security needs and potential privacy infringement.

As technology continues to advance, striking the right balance between harnessing the benefits of innovation and preserving personal privacy becomes an increasingly urgent challenge. Milestone ruling of *M.P. Sharma v. Satish Chandra*¹⁴ and *Kharak Singh v. State of U.P.*¹⁵, recognised the concept of right to privacy for the first time. However, this right was still not considered as a fundamental right under article 21 of constitution.

It was in the case of *Justice K.S. Puttaswamy v. Union of India*¹⁶, (nine judge bench), including chief justice kehar, and justices S.A. Bobde, DY Chandrachud, Nariman, R.K. Agarwal, Jasti Chelameshwar, Abhay Sapre, Abdul Nazir, Sanjay Kaul, which overruled the earlier decision of kharak singh and M.P. Sharma. Right to privacy was given the status of fundamental right under part III of Indian Constitution. This case is also widely recognised as AADHAR CASE. Not only it recognised right to privacy as fundamental right it also defined the interrelation and interdependence of right to life and personal liberty with privacy and right against self-incrimination.

Now, the question arises is what about the evidentiary value of these digital devices data, and does this data collected form the components of compulsion under right against self-incrimination?

In the *M.P. Sharma's* case, the term "to be a witness" was initially interpreted too broadly, meaning that even providing things like fingerprints, handwriting samples or DNA would have been protected under Article 20(3). Later in Kathi Kalu, this understanding was narrowed down. The Court decided that giving such physical evidence like, handwriting samples, blood sample, urine sample, footprint, fingerprint, exhibition of body or DNA does not infringe or violate the rights enshrined under Article 20(3) and is given immunity from protection against self-incrimination. This only applies to criminal proceeding and not civil proceedings. However, in countries like U.S.A., this immunity extends to both civil and criminal proceedings.

¹⁰ 1978 AIR 1025.

¹¹ AIR 2010 SC 1974.

¹² Universal Declaration of Human Rights, 1948, UN General Assembly Resolution 217 A (III).

¹³ International Covenant on Civil and Political Rights, 1966, UN General Assembly Resolution 2200A (XXI).

¹⁴ [1954] 1 S.C.R. 1077.

¹⁵ 1963 AIR 1295.

¹⁶ 2017 AIR 4161.

Now, Article 20(3) protects individuals only from being forced to share personal knowledge about the charges against them. This was in elaborate discussed in *selvi's* case which projected the intertwined and complementary relation of article 21 and article 20(3). the Supreme Court held that using narcoanalysis, polygraph tests, or brain fingerprinting (BEAP) on a person without their consent goes against Article 20(3) because it violates an individual's Liberty. This case emphasised on paradigm shift from crime control model to due process model in India. There are two major legal theories/principles according to Herbert Packer:

- 1) Crime control model
- 2) Due process model



Crime Control Model [CCM]: Under this approach, the criminal justice system focuses on quickly and effectively, identifying and managing people suspected of crime. The main goal is to keep criminal activity under strict control, prioritising public safety and order.

Due Process Model [DPM]: In this perspective, the system's powers are limited by the need to safeguard each person's dignity and independence. It shields individual's accused of crimes from the government's authority and abuse, thereby emphasizing fairness and protection of rights.

1.6 Application in Civil Proceedings

The protection under 20(3) is only available in criminal proceedings or any other proceeding of same criminal nature before the court or tribunal, before which a person is accused of 'offence' defined under Section 3(38) of General Clauses Act.¹⁷

The Supreme Court settled a dispute between high courts on whether section 151 of the CPC could be used to force an individual to have a medical examination in *Sharda v. Dharampal*.¹⁸ The Mysore high court in *Revamma v. Shanthappa*¹⁹ held that section 151 of the Code of Civil Procedure cannot be taken recourse to for the purpose. While high court of Calcutta in *Birendra Kumar Biswas v. Hemlata Biswas*²⁰ held to the contrary.

The Supreme Court approved the latter view saying that the court must be held to have the requisite power even under section 151 of the Code of Civil Procedure to issue such direction "either *suo-motu* or otherwise which, according to (the court), would lead to the truth".

Therefore, it can be concluded that the protection of article 20(3) doesn't extent to civil proceedings or any other proceeding other than criminal proceedings²¹

1.7 Application in Administrative Proceedings

Although main goal of the administrative proceedings is to find out the truth i.e. whether the person has committed the offence or not, still administrative proceedings are not covered under the ambit of Article 20(3).

In *K Joseph Awasthi v Narayanlal*²², the appellant was asked to appear before court for the examination as per section 45G of Banking Companies Act, 1949. The appellant contented that it was unconstitutional and was in contravention to article 20(3) of Constitution of India. The Supreme court held that a person asked question, although they are self-incriminating in nature, could not be in violation of article 20(3). There is no formal accusation to the appellant and inquiry was initiated with the sole object of collecting facts, documents and evidence. On the basis of enquiry, accusation may not necessarily be formed. Therefore, article 20(3) is not violated in this case, as accusation is mere a prior condition required for the application of protection against self-incrimination. It lack the essential element for setting article 20(3) into action.

Similarly in *Raja Narayanlal Bansilal v Maneck Phiroz Mistry*²³ investigative power of authorities under companies act was given immunity from article 20(3). The respondent, Maneck P. Mistry, who was appointed as an inspector under the Companies Act, and the appellant, Raja Narayanlal Bansilal, the managing agent of Harinagar Sugar Mills Limited, are at the centre of the case.

¹⁷ M.P. Jain, *Indian Constitutional Law* 1153 (LexisNexis, 8th edn.,2018).

¹⁸ AIR 2003 SC 3450.

¹⁹ AIR 1972 157.

²⁰ AIR 1921 cal 459.

²¹ M.P. Jain, *Indian Constitutional Law* 1154 (LexisNexis, 8th edn.,2018).

²² AIR 1964 SC 1552.

²³ AIR 1961 SC 29.

The appellant contested the inspector's jurisdiction to issue notices and carry out investigations under the 1956 Companies Act after the inspector was appointed under the 1913 Companies Act. Additionally, he said that these acts infringed upon his fundamental rights to equality before the law and protection against self-incrimination. Sections 645 and 646 of the new Act, which dealt with the continuation of previous orders and appointments, were specifically among the transitional provisions between the two Acts that the Supreme Court reviewed.

The Court determined that the notices were legitimately issued since the inspector's appointment under the previous Act was essentially carried over to the new Act by legal fiction.

Furthermore, the Court determined that there was no infringement of Article 20(3) because the appellant was not formally accused during the inquiry process. As a result, the appellant's objections were rejected, supporting the inspector's jurisdiction and the validity of the investigation conducted.

This decision acts as precedent for issues concerning the application of constitutional rights in regulatory investigations and the transition of law requirements in the future. It emphasizes how important it is for transitional rules to have explicit legislative intent in order to preserve regulatory continuity and safeguard individual rights.

Thus, it become very evident from above that the right against self-incrimination cannot be claimed in civil and administrative proceedings. This means that what cannot be achieved through criminal proceedings can be achieved via administrative proceedings very easily and evidence collected in the administrative proceedings can be used against the person prosecuted, later in criminal proceedings.²⁴ Due to this loophole, protection against self-incrimination loses its sacrosanct value with the growth of administrative proceedings.

1.8 Exceptions to Article 20(3)

After critically analysis what really comes under the ambit of article 20(3), i.e protection under self-incrimination, let's have a look at few exceptions to Article 20(3), which are mentioned below:

- **Compelled production of evidence:** An accused can be compelled to provide physical evidence like fingerprints, blood samples, urine sample or exhibition of body. In *State of Bombay v. Kathi Kalu Oghad*²⁵, the Supreme Court held that giving such physical evidence like, handwriting samples, blood sample, urine sample, footprint, fingerprint, exhibition of body or DNA does not infringe or violate the rights enshrined under Article 20(3) and is given immunity from protection against self-incrimination. This only applies to criminal proceeding and not civil proceedings. However, in countries like U.S.A., this immunity extends to both civil and criminal proceedings.
- **Supervision by the judiciary:** Evidence gathered under judicial supervision and with the accused's permission is admissible.
- **confession without threat, coercion and inducement :** Article 20(3) does not apply if someone confesses without being threatened, promised, or coerced. This view was supported in *Kathi Kalu case*, which held the view that any confession given by accused without any fear of threat, inducement and coercion, doesn't comes under the umbrella of article 20(3).
- **A voluntary waive off :** If an individual, willingly gives an oral confession or presenting incriminating documentary evidence, the accused can relinquish their privilege to self-incrimination

2. Narco-Analysis in Interrelation with Protection against Self-Incrimination

The principle of protection against self-incrimination is deeply entrenched in the jurisprudential doctrines of many democratic nations.²⁶ In India, this principle finds explicit mention under Article 20(3) of the Constitution, which states that "no person accused of any offence shall be compelled to be a witness against himself."²⁷ The rationale behind this principle extends beyond the narrow confines of formal criminal procedure; it reflects a core tenet of human dignity, fairness, and autonomy within the justice system.²⁸

2.1. What is Narco-Analysis?

Presently, Various methods to detect lying and deception of accused and suspect are used in Criminal Investigation. Nowadays, non-invasive procedures such as brain mapping tests, polygraphs, and narco-analysis test can identify deceit and deception without harming the individual physically or psychologically. Both the accused's guilt and innocence must be established using scientific methods. One such scientific advancement that is becoming more widespread is narco-analysis.

Purpose of the narco-test—Purpose behind this test is that a person usually resorts to lying by using his imagination but in the case of Narco-Analysis Test such imagination is minimised as the person goes into a semi-unconscious state by administration of drug. It is believed that the person cannot lie because his answers are spontaneous, and it is assumed that whatever he will speak under drug administration he will speak only truth.

²⁴ M.P. Jain, *Indian Constitutional Law* 1157 (LexisNexis, 8th edn.,2018).

²⁵ AIR 1961 SC 1808.

²⁶ M.P. Jain, *Indian constitutional Law* 132 (LexisNexis,8th edn.,2018).

²⁷ Constitution of India,art. 20(3).

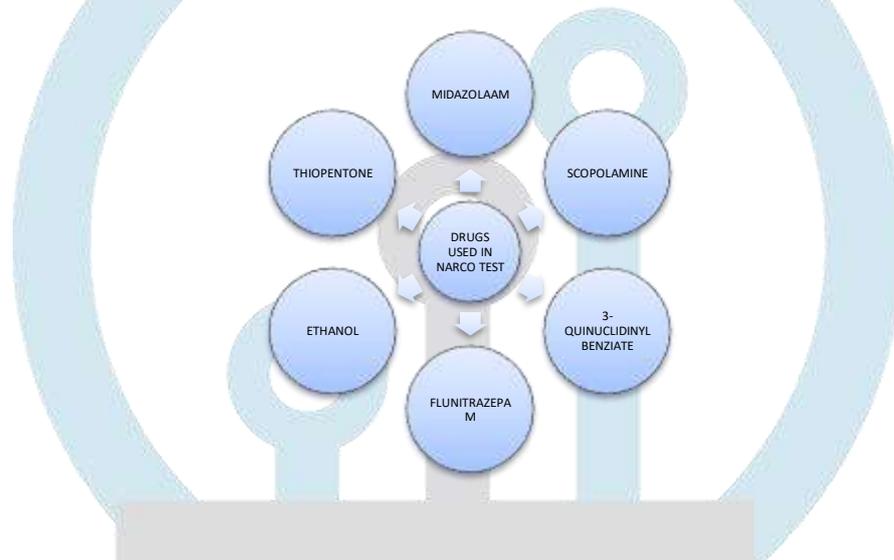
²⁸ H.M Seervai, *Constitutional Law of India* 1056 (Universal Law Publishing, 4th edn.,2013).

The term narco-analysis was first time coined by **Horseley**. It is based on the principle that a person have the ability to lie by means of his imagination and by narco-analysis this capacity to imagine is blocked or neutralized, by leading him into a subconscious or semiconscious stage, and in this very stage it become very difficult for an individual to lie and the answers to the questions would be restricted to facts he is already aware of²⁹

Narco-analysis tests involve the injection of sodium pentothal, which is also called Truth Serum. The administration of the drug (sodium pentothal) lowers an individual's self-consciousness, thereby allowing him/her to speak freely. This happens when the person becomes less inhibited and enters a hypnotic state.³⁰ This stage allows examiners to question the subject and get real answers. Narco-test is done under the observation of a psychologist, investigating officer, or a forensic expert. It is a lighter alternative to other commonly known third degree treatments used by investigating departments.³¹

The interest in truth serum was generated in 1922 when **Rover House** discovered that a patient under the influence of drug cannot create a lie and slows down a person's power to reason or think.³² **Clarene W. Muenberger** started using barbiturate drugs on reluctant subjects which not only upheld in few cases but also evolved into practice to extract truth from suspects.³³

In India, Narco-analysis tests are also used in certain major cases like 26/11 Mumbai terror attack case and Gujrat riots in 2002.



Narco-Analysis test v. Polygraph Test

A polygraph test, often known as a lie detector test, uses an equipment that tracks and records a variety of physiological signs, including as pulse, respiration, blood pressure, skin issues, and breathing patterns. When the suspect is subjected to a series of interrogations, this usually happens. The Assumption behind a polygraph test is that the mind and body are connected. It is conducted by several parts of a polygraph machine. Blood pressure, respiration, sweat gland alteration, blood flow, and other factors are measured using devices like cardiac cuffs or sensitive electrodes that are attached to the individual's body.

Each recorded answers is given a number that specifies whether that individual is telling the truth, lying, or is confused. They use devices attached to the suspect to measure physiological parameters like blood pressure, heart rate, and breathing, which are presumed to change when someone lies. Drugs are not injected into the body of an individual during polygraph exams, in contrast to narco-analysis test. During narco-test, a drug called *sodium pentothal* which has the ability to put a subject into a hypnotic or drugged state, neutralize their imagination, and anticipate them to divulge the truth is injected as part of an investigative technique. On the other hand, polygraph examinations examine and evaluate factors like blood pressure, pulse rate, respiration, etc. while attaching devices like cardio-cuffs or sensitive electrodes to the defendant (during questioning and investigation) instead of injecting drugs.

The P300 wave obtained by visual stimulation is used to assess cognitive processes in humans, and the value of the latency and amplitude of the P300 wave can be a measure of the severity of dementia processes. P300 is a particular type of electric wave which recognises a sound or a person. Brain-mapping test is a comprehensive analysis of brainwave frequency bandwidths. During this procedure, forensic experts apply unique neuroscience techniques to analyse whether the suspect's brain recognises similar things from crime scene.³⁴

2.2 Historical Evolution of Narco-Analysis

The term "narco-analysis" originates from the Greek word *narkē*, meaning "anaesthesia" or "torpor," and the concept initially emerged in the early 20th century.³⁵ Early in the 20th century, physicians began to administer 'scopolamine' along with two other

²⁹ Ramachandran, *Law of Narco-Analysis: Right against Self-incrimination 3*, (Kamal Publishers, New Delhi).

³⁰ Rishav Banerjee, "Narco-Test is the Brain Mapping by Psychotherapy to get Information Of Truth" 10 *World Journal of Pharmaceutical and Medical Research 2* (2024).

³¹ Ibid.

³² Ramachandran, *Law of Narco-Analysis: Right against Self-incrimination 3*, (Kamal Publishers, New Delhi).

³³ Ibid.

³⁴ Rishav Banerjee, "Narco-Test is the Brain Mapping by Psychotherapy to get Information Of Truth" 10 *World Journal of Pharmaceutical and Medical Research 2* (2024).

³⁵ G. dunkin, "Historical Origins of Narco Interrogations," 45, *American Journal of Forensic Medicine 58* (2009)

drugs i.e. 'morphine' and 'chloroform', to induce a state of "twilight sleep" during childbirth. Scopolamine was known to produce sedation and drowsiness, confusion and disorientation, incoordination and amnesia for the events similar to intoxicated state.³⁶

In 1922, an idea crossed Robert House's, an obstetrician in Dallas, Texas mind, that a similar technique can also be used in the interrogation of suspected criminals, and he arranged to interview of two prisoners in the Dallas county jail under 'scopolamine', whose charges seemed clearly confirmed. Under the administration of the drug 'scopolamine', both men denied the charges on which they were accused; and both, later upon trial, were found not guilty. Thus, Robert House observed that a patient under the influence of scopolamine "cannot create a lie... and there is no power to think or reason".³⁷

This experiment of drug administration by Robert House and his observations attracted attention of people all across the world. Based on which, the concept or idea of a truth serum, was launched in the public domain and consciousness. After that Robert House is widely recognised as the "father of truth serum".

The concept was driven by psychiatric attempts to use medicines that minimize inhibitions to access patients' subconscious material. There were instance by Intelligence agencies for experimenting with "truth serums" during World War II.

Early medical uses were mostly therapeutic, with the goal of helping psychiatric patients discover suppressed memories. However, over time, law enforcement agencies were interested in the idea that these drugs--typically sodium pentothal, scopolamine, or sodium amytal--could cause people to lose their self-control and speak more freely than they otherwise would. Although courts regularly questioned the efficacy and legality of narco-analysis, certain American police agencies experimented with it in the mid of the 20th century.

In India, narco-analysis gained traction in high-profile criminal cases towards the turn of the 21st century. There was a spate of cases where investigative agencies purportedly used narco-analysis on suspects in terrorism, heinous offenses, and corruption cases.³⁸ Narco-analysis test is also used in certain major cases like 26/11 Mumbai terror attack case and Gujrat riots in 2002.

Debates over constitutional protections and the credibility of statements made while under the influence of drugs draw more attention as the media emphasized more on sensational and dramatic trials.

2.3. Scientific Procedure of Narco-Analysis Test

Narco-analysis typically involves the controlled administration of a barbiturate—most frequently sodium pentothal—through an intravenous route. Narco-Analysis tests are directed in four stages:³⁹

1. **Pre - Test Interview:** In this step all information regarding the test is provided to the individual also the consent is taken.
2. **Pre - Narcotic State:** in this stage, the Anaesthetist will administer drugs or narco and make sure to maintain the Pre narcotic state throughout the whole interview, During this stage Drug is injected by Anaesthetist till the person appears relax and reaches a sleep-like state. Drug is given intravenously to induce hypnosis. And as the person speech start slurring the interview starts.
3. **Semi - Narcotic State:** in this stage, the Forensic Psychologist will facilitate the interview, during this stage an individual appear to be flushed, slow and slurred speech can be noticed. Individual under the drug administration will dooze off and Once he wakes up, anaesthetist checks him/her. After the checkup he is given some drinks like coffee or tea, Complete interview is audio and video recorded. Additionally it is also written.
4. **Post - Test Interview:** This is the last step, after the person wakes up and checked up, his/her memory is checked thoroughly. Individual is allowed to know what he/she has spoken during interview. The drug purportedly lowers the person's defences and inhibitions, rendering them more susceptible to suggestion and more likely to speak freely. The procedure usually takes place under the supervision of a medical professional, often in a forensic science laboratory setting, and investigators or psychologists may pose questions to the subject in this semi-conscious state.⁴⁰

2.4. Who All Persons are Required for Conducting Narco Test:

In India, the narco test is conducted in the presence of:

- Anaesthesiologist
- Psychiatrist
- Audio-videographer
- Clinical forensic psychologist
- Nursing staff
- Writer

2.5. Guidelines of Supreme Court, NHRC 2000

The *National Human Rights Commission*, has laid down following guidelines for the administration of Lie Detector Test :

- I. The consent in presence of magistrate.

³⁶ Ramachandran, *Law of Narco-Analysis: Right against Self-incrimination* 17, (Kamal Publishers, New Delhi).

³⁷ Ibid.

³⁸ N. Dias, "Narco Analysis in High-Profile Indian Criminal Cases: A Sociological Study," *Indian Police Journal*, Vol. 52, No. 3 (2009), p. 33.

³⁹ Suresh Kumar, narco analysis test, *International Journal of Management and Humanities (IJMH)* ISSN: 2394-0913 (Online), Volume-4 Issue-11, July 2020

⁴⁰ ibid

- II. Test is administered only after consent of accused. And even if he volunteers for the test, he should be provided access to a legal representative.
- III. the physical, physiological and legal implications should be clearly explained to him.
- IV. The person should be represented by legal representative, during trial before magistrate.
- V. The audio and video recording of test shall be done by an independent agency.
- VI. A full medical and factual narration of the manner of the information received must be taken on record.⁴¹

2.6. Merits of Narco- test:

- 1 It is used as an interrogative technique by investigation agencies, like police instead third-degree interrogation. The police believe that narco-test helps a lot in crime detection. It can provide clinching evidence needed for prosecution.
- 2 Under the influence of the test the capacity of imagination is blurred. Therefore, the person is into such a semi-conscious state that they cannot lie.
- 3 It can be used in case of terrorism. Like after Mumbai terror attack.
- 4 Very helpful in crimes that are well organized, like serial killing.
- 5 Provides efficient data in cases where no evidence is available.
- 6 Narco-test have 96-97% success rate.

2.7. Demerits of Narco-Test:

Using narco-analysis test as a tool is considered as a easy method for extracting information, clues and leads from suspects in a crime. But the problem is that the investigators who administer these drugs into the suspect are not from medical background and often lack needed information for conducting test, which can be fatal for the life of suspect.

Other underlying demerits of the test: Damage to brain cells; long term damage of memory; Irreversible unconsciousness; paralysis, or death⁴²

Further, various psychiatrist on the basis of their experience in this field and by conducting experiment tried to prove that it is not necessary that after injecting *sodium pentothal* or *sodium amythal*, suspect always speaks the truth.⁴³ Many accused individuals even under the administration of drug give false confessions. A person who is strongly determined to speak only lie will do so even under the aftereffects of drugs.

2.8. Constitution of India and Narco-Analysis Test

The privilege against self-incrimination revolves around the following three major legal principles:

- *The accused is presumed to be innocent until he is proved guilty.*
- *It is for the prosecution to establish his guilt, and*
- *The accused need not make any statement against his will.*

The privilege against self-incrimination thus enables respecting a human's privacy and upkeeping civilized standards for the enforcement of criminal justice.

Article 20(3), of the Constitution of India states that "*no person accused of an offence shall be compelled to be a witness against himself*".⁴⁴ It operates as a protection against testimonial compulsion. Section 161(2) of the Criminal Procedure Code provides a similar protection to the accused. It provides that a person is, bound to truly answer all questions while being examined by the police except those that "would have a tendency to expose him to a criminal charge or penalty..." The protection against self-incrimination is available to both the accused persons and suspects who have not been charged with the commission of an offence. This Article embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. The cardinal principle of criminal law which is really the bed rock of English jurisprudence is that an accused must be presumed to be innocent till the contrary is proved.

It is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own free will. The Fifth Amendment of the American Constitution declares that no one shall be compelled in any criminal case to be a witness against himself. The fundamental rule of criminal jurisprudence against self-incrimination has been raised to be a rule of Constitutional law also. This guarantee extends to any person accused of an offence and prohibits all kinds of compulsions to make him a witness against himself. The Supreme Court has observed that this right embodies the following essentials:

- 1 It is a right pertaining to a person who is accused of an offence.
- 2 It is a prosecution against 'compulsion to a witness'.
- 3 It is a protection against such compulsion relating to his giving evidence 'against himself'.

In *Nandini Satpathy v. P.L. Dani*,⁴⁵ the Supreme Court has considerably widened the scope of Article 20(3) of the Constitution of India and has held that the prohibitive scope of this article goes back to the stage of police interrogation not commencing in Court only. It extends to, and protects the accused regarding other offences, pending or imminent, which may deter him from voluntary disclosure. The phrase 'compelled testimony' must be read as evidence procured not merely by physical threats or violence but by

⁴¹ National Human Right Commission, India Available at : <https://nhrc.nic.in/press-release/guidelines-administration-lie-detector-test>.

⁴² Suresh Kumar, narco analysis test, *International Journal of Management and Humanities (IJMH)* ISSN: 2394-0913 (Online), Volume-4 Issue-11, July 2020

⁴³ Ramachandran, *Law of Narco-Analysis: Right against Self-incrimination* 45, (Kamal Publishers, New Delhi).

⁴⁴ The Constitution of India, art. 20(3).

⁴⁵ 1978 AIR 1025

psychic (mental) torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, overbearing and intimidatory methods and the like.

Thus, compelled testimony is not limited to physical torture or coercion but extends also to techniques of psychological interrogation which cause mental torture in a person subject to such interrogation.

'To be a witness' has been interpreted by the Indian Supreme Court to mean "imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise." Further, giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification would not amount to self-incrimination. The rationale informing this was that the framers of the Constitution could not have intended to burden the criminal justice system with obstacles to investigation.

Subjecting the accused in that multi crore rupees fake stamp paper case to 'certain physical tests involving bodily harm', such as Narco-analysis lie detector tests did not violate any constitutional rights, specifically the right against self-incrimination guaranteed by Article 20(3).

Article 20(3) of Constitution of India deals with right against the compulsion of accused to give evidence against himself. But left to himself he may voluntarily waive his privilege by entering a witness-box or by giving evidence voluntarily on request and request implies no compulsion.

Therefore, evidence given on request is admissible against the person giving it on administer the truth serum drug consent is prerequisite. Hence it cannot be considered as a compulsion. In the case of *State of Bombay v. Kathi Kalu Oghad*,⁴⁶ it was held that to attract the protection of Article 20(3) it must be shown that the accused was compelled to make the statement likely to be incrimination of himself. Compulsion means duress which includes threatening, beating or imprisoning of wife, parent or child of a person. Thus, where the accused makes a confession without any inducement, threat or promise, Article 20(3) does not apply.

In extremely narrow view of "compulsion" and held that the only pain caused is from the injection prick and that there is, therefore, no compulsion. Further, in the case of *Dinesh Dalmia v. State*⁴⁷, Madras Court held that scientific test of accused by conducting polygraph.

Narco-analysis and brain mapping test on accused to bring out truth would not amount to breaking his silence by force and intrusion of this constitutional right to remain silent under Section 45 of the Evidence Act and under Article 20(3) of the Constitution of India. Criminal proceedings taken to demystify the grey area of investigation and in the case when the accused refused to come forward with the truth, the scientific tests were restored to by investing authorities. Again, administration of the drug against the subject's will amounts to compulsion.

As defined in the English Law Dictionary "A physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted." Further, the evidence gathered based on the results of the test can be admitted as corroboratory evidence. Sriram Lakshman, a lawyer, rightly asserts that "this is, arguably, a roundabout way of subverting the right to silence - acquiring the information on where to find the weapon from the subject when, in his right senses, he would not turn witness against himself." Finally, while the results of the narco-analysis tests conducted may not be admitted in Court, the broadcast of the test conducted on a suspect in a fake stamp paper scam, Abdul Telgi, for instance, has created a prejudice and vitiated the guarantee of a fair trial. The application of Narco-analysis test involves the fundamental question pertaining to judicial matters and to Human Rights. The legal position of applying this technique as an investigative aid raises genuine issues like encroachment of an individual's rights, liberties and freedom.⁴⁸

Subjecting the accused to undergo the test, as has been done by the investigative agencies in India, is considered by many as a blatant violation of Article 20(3) of Constitution and it also goes against the maxim '*nemo tenetur se ipsum accusare*'. If the confession from the accused is derived from any physical or moral compulsion it should stand to be rejected by the Court.

2.9. Medical Perspective of Narco-Test

Now in place of third-degree interrogation, police opted for conducting narco-analysis tests on suspects, which seems much humanitarian method.

Through these tests, investigation officers are much concerned about the empirical facts or truth rather than psychological one so that it can be used against the suspects as evidence.

These tests are basically practiced by the psychiatrists to diagnosis and treatment of the mentally ill subjects so that can exactly know the psychological truth about the subject who is not able to reveal it. But now police using it as a handy method for investigation instead of third-degree interrogation method.

In annals of police investigation physical coercion has been substituted for painstaking and time taking inquiry in the belief that direct methods produce quick results. The practice of employing physical force and coercion during police investigation is well defined by Sir James Stephens, writing in 1883,⁴⁹ as –

"It is far pleasanter to sit comfortably in the shade, rubbing red pepper in a poor devil's eyes than, to go about in the sun hunting up evidence."

Various Psychiatrists have observed based on their experience in this field and by conducting experiment that it is not necessary that after injecting Sodium Pentothal or Sodium Amytal, suspects always speaks the truth.

⁴⁶ AIR 1961 SC 1808.

⁴⁷ 2006CRILJ2401

⁴⁸ Ramachandran, *Law of Narco-Analysis: Right against Self-incrimination* 45, (Kamal Publishers, New Delhi).

⁴⁹ Cri LJ, Journal section, 2009, pg 25.

J.M. MacDonald, a Psychiatrist in District Courts of Denver, further observed that drug interrogation is of doubtful value in obtaining confessions to crimes. Criminal suspects under the influence of Barbiturates may deliberately without information, persist in giving untruthful answer or falsely confers to crimes they did not commit.⁵⁰

The psychopathic personality, in particular, appears to resist successfully the influence of drugs. He concluded that a person who gives false information prior to receiving drugs is likely to give false information also under narcosis, that the drugs are of little value for revealing deceptions, and that they are more effective in releasing unconsciously repressed material than in evoking consciously suppressed information.

Other Prominent among the dangers in the context of medical reasons are: - Damage of brain cells; perpetual damage of memory; perpetual state of misperception; Irreversible unconsciousness or death; permanent loss of all body activity; respiratory paralysis.⁵¹

G. Inbau, Northwestern University's law professor, based on considerable experience in participating and observing in the tests claimed that such tests are occasionally effective on persons who, if they have been properly interrogated, would have disclosed the truth anyways. The person who is determined to lie will usually be able to continue the deception even under the effects of the drug. On the other hand, the person who is likely to confess will probably do so as the result of skilful police investigation and it will not be necessary to use drugs.

There is one widely recognised experiment by Gerson & Victoroff, during which they examined 17 soldiers proved guilty of antisocial behaviour under drug administration of Sodium Amytal. He found all 17 confessed but 4 out of them made false statements and on this basis, they concluded that persistent careful questioning could reduce ambiguities in drug interrogation but cannot eliminate them altogether.⁵²

Central Intelligence Agency (CIA) that extensively studied truth serums including barbiturates, scopolamine and LSD emphasized in its testimony at a United States Senate hearing in 1977 concede that while truth drugs can be useful in overcoming resistance not dissolved by other methods, the actual content of what comes out during the interrogation can be "psychotic manifestations..... hallucinations, illusions, delusions or disorientation".

It also said that even under the best conditions, the barbiturates would elicit an output contaminated by deception, fantasy, garbled speech, and so on.

Simply put, narco-analysis tests have been well known for many decades but still they are unreliable. They are questionable not only on medical grounds but also on legal and ethical grounds. The major drawbacks of narco-analysis are:

- Questioning suspects after injecting drugs is ineffective on suspects who are determined to lie to investigators.
- Risk of false confessions from innocent subjects by putting tricky questions or creating impact of facts by repeating the same question regularly.

For revealing truth from the suspects, it is not the drug, which is injected, is important but the skill of investigator to put questions in such a way that subject can disclose all the empirical facts. Due to the influence of drugs the subject is not able to speak up on his own but can answer specific but simple questions. So, in all drugs provides rapid access to information that is psychiatrically useful but of doubtful validity as empirical truth and the same empirical truth can be obtained from fully conscious subjects through non-drug psychotherapy and skilful police interrogation.⁵³

Many of the Critics of narco analysis test have argued that the induced state may not only be unreliable for extracting factual information but can also be traumatic for the subject. The altered state of consciousness might lead to a sense of violation of mental privacy. Ethical guidelines in both psychiatry and forensic science emphasize minimizing harm and ensuring informed consent. When a procedure is carried out involuntarily, or under the pressure of criminal investigation, the question of true informed consent becomes highly contentious.

2.10. Ethical Perspective of Narco-Analysis Test

UN General assembly declared that, *"It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or cruel, inhuman or degrading treatment or punishment."*⁵⁴

Under UN the term *torture* has four essential elements:

- It is a degrading treatment along with physical/mental suffering .
- It is intentional.
- There is a purpose behind such act for instance, extracting vital information, confession, etc.
- done by a person in his official capacity or by a person acting on his behalf by his assent.

When we look at the above elements of torture, narco-analysis, automatically fits into it.

Under the narco-analysis the persons is subjected to mental suffering, and if he discovers that some of his fantasies are revealed in the procedure, then it becomes even more severe mental suffering for him. Very often the police or forensic lab release the video recording of the person into media, leading to many cruel comments and trial by media even before actual court trial.⁵⁵

⁵⁰ Cril. LJ, Journal Section, 2009, pg 22

⁵¹ Suresh Kumar, narco analysis test, *International Journal of Management and Humanities (IJMH)* ISSN: 2394-0913 (Online), Volume-4 Issue-11, July 2020

⁵² McDonald J.M., Narco-Analysis and Criminal law, Am J psychiatry 1954

⁵³ Ramachandran, *Law of Narco-Analysis: Right against Self-incrimination* 108, (Kamal Publishers, New Delhi).

⁵⁴ Principle 2 of 'Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the protection of Prisoners and Detainees against Torture and other Cruel Inhuman or Degrading Treatment or Punishment' (adoption by GA resolution 37/194 of 18 Dec. 1982).

⁵⁵ Chaudhry, Sharmendra, Constitutionality of Narco Analysis in India (October 4, 2010). Available at

SSRN: <https://ssrn.com/abstract=1702866> or <http://dx.doi.org/10.2139/ssrn.1702866>

Medical Council of India (MCI) added to its Code of Medical ethics that, “*The physician shall not aid or abet torture, nor shall he be a party to either infliction of mental or physical trauma or concealment of torture inflicted by some other person or agency in clear violation of human rights.*”

Various Arguments against narcoanalysis: Critics argue that administering drugs to individuals without their informed consent breaches their autonomy and bodily integrity since it affects their cognitive abilities and could cause them to divulge information against their will, violating autonomy of that individual.

Reliability concerns: The information obtained through narcoanalysis may be unreliable since the drugs can induce hallucinations, false memories, or confabulations. The suspect’s state of mind may also lead to confusion and inconsistent responses. Memories can be altered or fabricated, leading to potentially misleading or false information. During a drug-induced state, individuals may become more susceptible to suggestions, leading them to provide the information they think the interviewer wants to hear rather than the truth.⁵⁶

Human rights dilemma: The use of narcoanalysis test raises serious concerns regarding legal and human rights implications, and to what extent it violates an individual right to remain silent and the right to a fair trial. These rights are not only incorporated via many international conventions but also form foundation for principles of natural justice.

Ethical dilemma: Narcoanalysis might be used as a coercive technique, compelling a person to speak under the influence of drugs, even when they might not want to or are innocent of wrongdoing. It may be argued that inferences derived from narcoanalysis are unreliable due to the altered state of mind produced as a consequence of drug-induced state.

Bombay High court in the case of *Abdul Karim Telgi*⁵⁷ involving scam of counterfeit of multi crore stamp paper, held that since the narco-analysis test and brain mapping test inflict minimal bodily harm, and for that very reason they cannot be held in violation of the fundamental rights.

Whereas the general view in constitutional jurisprudence and criminal jurisprudence is that the use of torture has been looked upon as inhumane or illegal treatment and violative of the fundamental right to life, liberty and the right against self-incrimination.

Pity is that the courts in India are taking these tests as handy evidence without paying attention to the scientific, legal and ethical issues rising against them.⁵⁸

No standardization: there are no unified standard protocols and many questions regarding the scientific validation are still undiscovered yet. It is left on open ends, which raises concerns about the effectiveness of the test regarding admissibility, validity and ethical use of narcoanalysis as a tool of interrogation.

Despite all these observations by various medical experts, medical professionals are still participating in pharmacological torture by conducting so called “*Truth Serum tests*” for easy way out.

2.11. Landmark Judgments Regarding Evolution of Narco-Analysis In India

The practice of narco-analysis in India over the period of time has come into limelight for its conflict between the State’s interest in effective and rapid crime investigation, and the accused’s right to bodily autonomy and constitutional protection against self-incrimination. Because of this conflict, it has undergone evolution within the country, resulting in landmark Supreme Court judgments. Through these cases we can trace how the jurisprudence around narco-analysis has progressed, highlighting key rulings that have defined its present-day legal status.

One of the first cases where Indian courts recognised the broader concept regarding compelled testimony and self-incrimination is *M.P. Sharma v. Satish Chandra*,⁵⁹ wherein the Supreme Court recognized that the protection under Article 20(3) is broad enough to encompass various dimensions of involuntary testimony, although this ruling emerged at a time when narco-analysis was not commonly in use.

Though *M.P. Sharma*,⁶⁰ did not answer questions relating to narco-induced interrogation, its emphasis on shielding individuals from compelled self-incrimination laid the groundwork for future controversies over investigative tools that circumvent traditional questioning methods.⁶¹

In *Nandini Satpathy v. P.L. Dani*,⁶² the Supreme Court held that the prohibition on self-incrimination extends beyond mere court testimony to include custodial interrogations.⁶³ The case involved the question of whether an accused could be forced to answer a long list of questions posed by the police, and the Court made it clear that Article 20(3) encompassed not only direct confessions but any forced disclosure of incriminatory material.⁶⁴ Although *Nandini Satpathy* did not directly give any definite answer relating

⁵⁶ Vaswani, Vina1; Shenoy, Venkatkrishna2; Ifeanyichukwu, Akuma3. *Medicolegal and Ethical Perspectives in the Use of Narcoanalysis in Criminal Investigations in India*. *Archives of Medicine and Health Sciences* 12(2):p 281-283, May–Aug 2024. | DOI: 10.4103/amhs.amhs_17_24

⁵⁷ CRIMINAL ORIGINAL PETITION No.25880 of 2007

⁵⁸ Chaudhry, Sharmendra, *Constitutionality of Narco Analysis in India* (October 4, 2010). Available at SSRN: <https://ssrn.com/abstract=1702866> or <http://dx.doi.org/10.2139/ssrn.1702866>

⁵⁹ 1954 AIR 300

⁶⁰ *ibid.*

⁶¹ H.M. Seervai, *Constitutional Law of India* (Universal, 4th edn., 2013) p. 1068.

⁶² 1978 AIR 1025.

⁶³ D.D. Basu, *Commentary on the Constitution of India* (LexisNexis, 9th edn., 2020) p. 957.

⁶⁴ *ibid.*

to narco-analysis, it enshrined the principle that individuals should not be manipulated or coerced into testifying against themselves, a stance that would later prove critical when the Court eventually addressed drug-induced interrogations.

The constitutional validity of narco-test again came into highlight during early 2000s when Indian authorities began using narco-analysis with more frequency, often in high-profile criminal cases. One such landmark judgment was *Dinesh Dalmia v. State*⁶⁵, where the Madras High Court permitted narco-analysis on the ground that it served as an investigative aid, provided that the test was performed under medical supervision and supposedly on the accused's consent.⁶⁶ But it was criticised because such tests might be conducted under duress, undercutting the notion of true voluntariness.

There were no clear guidelines as under what circumstances narco-analysis could be allowed, also, failing to properly address fundamental questions about bodily integrity and mental privacy.

The jurisprudence regarding narco analysis test in India evolved drastically after *Selvi v. State of Karnataka*,⁶⁷ where the court focused on whether scientific techniques like narco-analysis, polygraph tests, P300, DNA sampling, and brain mapping, violates the constitutional rights of the accused.⁶⁸ It was argued that compelling individuals to these methods without their free and informed consent amounted to testimonial compulsion, and is violative of constitutional right enshrined in Article 20(3). These test also violated Article 21, which emphasised that forced sedation infringed on one's right to personal liberty and bodily autonomy. In a comprehensive ruling, the Supreme Court determined that forcing any person to undergo narco-analysis is an unconstitutional breach of the right against self-incrimination and the right to life and personal liberty.⁶⁹

The Court in *Selvi* not only referenced the fundamental principle laid out in *M.P. Sharma*, that no one can be compelled to provide self-incriminatory evidence, but also drew upon prior jurisprudence, including *Nandini Satpathy*, to emphasize that the right against self-incrimination includes a wide range of protections. The Court rejected that narco-analysis was merely a mechanical procedure, expressing how the drug-induced state could compromise free will, often resulting in statements that might be unreliable. The judgment unequivocally declared that involuntary administration of truth serums, polygraph machines, or brain-mapping tests would be unconstitutional.

Although *Selvi* struck down compelled narco-analysis, one such question which was left unanswered was, the possibility of conducting such tests if an accused individual gave genuinely voluntary and informed consent. The Court warned regarding that the evidentiary value of drug-induced statements, as the sedation process affects cognitive skills and memory efficiency. Even if narco-analysis is carried out with the individual's consent, the statements cannot be treated as admissible evidence automatically unless corroborated by independent material. In effect, the Supreme Court recognized that while scientific methods can only be used as an aid to police investigation, they must not override constitutional safeguards.

In the aftermath of *Selvi*, there were attempts by investigative agencies to read the ruling as permitting narco-analysis, provided a suspect or accused individual explicitly consented. True voluntary consent, however, is difficult to ensure within the pressures of police and criminal investigation. Judgments following *Selvi* have generally reassured that any consent must be free from duress, intimidation, or inducement, and that courts retain the discretion to reject evidence obtained through such tests if there is iota of doubt about voluntariness or reliability. The Supreme Court's emphasis on respecting individual autonomy has thus shaped the jurisprudence on forensic practice and its reliability in India.

Based on all the cases above mentioned it can be concluded that, the evolution of narco-analysis in India is inextricably tied to the Supreme Court's constitutional jurisprudence on self-incrimination and bodily integrity. The recognition that sedation compromises free will, and that any forced technique violates the heart of Article 20(3), has shaped India's legal environment. Today, the emphasis remains on preserving an accused's autonomy in line with the Supreme Court's unwavering insistence that justice cannot be served by compelling self-incriminatory testimony through chemical means.

3. Conclusion

This paper highlights the interlink between narco-analysis and the Indian Constitution's article 20(3) guarantee against self-incrimination. This protection against self-incrimination reflects a deeper moral commitment to uphold a human autonomy and dignity, which goes beyond formalities of procedure. The limits of this well-established legal protection are strained by contemporary scientific investigative methods, especially narco-analysis. Some investigators think that injecting a substance, such as *sodium pentothal* or *sodium amytal*, to create a sedative condition provides an opportunity to reveal information that would be concealed if suspects resorted to their right to silence. The conflict, however, is whether or not such a process violates a person's right to remain silent.

There are different kinds of views followed regarding this test. Some believe it's a better replacement for third-degree methods of interrogation. Others believe that it have various medical and ethical violations as the individual's free will becomes compromised when the imagination is chemically dampened. The claim that a suspect "cannot lie" under such a drug depends on an assumption, and this assumption is far from always reliable because a drug-induced person may combine false memories or suggestions with the truth. Numerous ethical and legal disputes are also discussed in this chapter.

This procedure gained popularity in the early 20th-century practice of administering scopolamine in medical settings, after Robert House famously experimented with patients under sedation and concluded that they "could not create a lie." In India, interest in narco-analysis grew at the turn of the 21st century as investigative bodies used it in terrorism and corruption cases. Such usage,

⁶⁵ 006CRILJ2401

⁶⁶ Dr. S. K. Singh, "Narco-Analysis in India: Evolving Trends and Legal Boundaries" (2018) 14 Indian Journal of Criminal Law 112 at 115.

⁶⁷ AIR 2010 SC 1974.

⁶⁸ M.P. Jain, Indian Constitutional Law (LexisNexis, 8th edn., 2018) p. 1149.

⁶⁹ Ibid.

however, raised constitutional alarms once courts began examining how forcibly altering cognition could threaten an accused person's fundamental rights.

The jurisprudential evolution, shaped by various landmark Judgments in India brought to light the definitive turning points. Cases such as, *M.P. Sharma* contributed to a broad reading of Article 20(3), *Nandini Satpathy* demonstrated that self-incrimination starts at the stage of police interrogation, and *Dinesh Dalmia* opened a doorway for narco-analysis under "medical supervision." Yet the real watershed was *Selvi v. State of Karnataka*, where the Supreme Court ruled that forcibly subjecting an accused to narco-analysis (or polygraph or brain mapping) violates constitutional guarantees of self-incrimination and personal liberty. It recognized that sedation diminishes a suspect's capacity for choice and can never be forced; any data obtained under such conditions is likely to be unreliable and, more importantly, unconstitutionally obtained. The judgment did allow for voluntary testing under strict conditions, but it still insisted that such "consent" be genuinely free and not shaped by coercion, and that the results themselves not be treated as automatically admissible.

Analyzing these judgments, there is a transition from earlier judgments, which narrowly addressed self-incrimination in conventional questioning, to *Selvi*, which confronted advanced techniques, and how the Supreme Court has progressively refined the protective scope of Article 20(3). Investigative agencies are thus expected to adopt more robust and ethically sound methods rather than rely on sedation or deception. The Supreme Court's stand in *Selvi* is laudable for championing individual rights, it also leaves some ambiguities. It emphasis on the test's unreliability as evidence opens questions about whether partial or secondary uses of narco-analysis (to unearth leads or hidden evidence) might slip through legal loopholes. There is also an argument from the law enforcement side that in extreme cases (terrorism or mass violence), the state's interest in quickly unveiling hidden threats might justify extraordinary methods. Yet, the paper has highlighted that such utilitarian reasoning often imperils fundamental liberties central to a constitutional democracy.

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